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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,101	04/08/2004	Agostino Tucciarone	AT-11	1706
21394	7590	10/26/2006	EXAMINER	
ARTHOLOCARE CORPORATION 680 VAQUEROS AVENUE SUNNYVALE, CA 94085-3523			HOFFMAN, MARY C	
		ART UNIT		PAPER NUMBER
		3733		

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/822,101	TUCCiarone et al.
	Examiner Mary Hoffman	Art Unit 3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 August 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-19 and 21-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 15-19 and 21-29 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 4/8/02 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Priority***

As discussed in the final office mailed 3/20/2006, the current application is being treated as claiming foreign priority to prior application PCT/GB03/01606 and prior British patent application GB 0208667.6 as stated on the supplementary application data sheet filed 6/07/2004, and it will not be treated a continuation from PCT/GB03/01606 as stated on the transmittal letter filed on 4/08/2004. However, a claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on British application GB 0208667.6, since the United States application was filed more than twelve months thereafter.

It is also noted that applicant has not filed certified copies of the prior applications as required by 35 U.S.C. 119(b).

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/16/2006 has been entered.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the limitation " said guidewire" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Chervitz et al. (U.S. Patent No. 6,499,486).

Chervitz et al. disclose a method of ACL graft ligament fixation comprising the steps of forming a passing pin tunnel in a femur (FIG. 10), the passing pin tunnel having a longitudinal axis and exiting a superior wall of the femur; forming a femoral tunnel along the longitudinal axis, the femoral tunnel having a larger diameter than the passing pin tunnel and terminating in the femur; forming a transverse tunnel intersecting the femoral tunnel; locating a graft loop (ref. #25) in the femoral tunnel in such a manner that an open face of the loop faces an intersection where the femoral tunnel intersects the transverse tunnel, and wherein the locating comprises pulling on sutures (ref. #100)

holding the graft loop to locate the graft loop, and the pulling on sutures comprises pulling on the sutures through the passing pin tunnel; passing at least a part of a head section of a transverse suspension device (see FIG. 4) through the graft loop via the transverse tunnel until the head contacts an opposite wall of the femoral tunnel. After location of the graft loop in the femoral tunnel, a guide wire is advanced thereunder from the transverse tunnel (FIG. 11). The suspension device is passed along the guide wire after the guide wire is advanced under the graft loop. The head of the device is advanced as far as a distal head of a recess (channel opposite to transverse channel) formed in the opposite wall of the femoral tunnel. The graft is urged against the opposite wall as the head is advanced into the recess.

Claims 21-23 and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Howell et al. (U.S. Patent No. 5,674,224).

Howell et al. disclose a method of ACL graft ligament fixation comprising the steps of providing a transverse suspension device comprising a proximal body section defining a longitudinal axis, a head section extending along the longitudinal axis and protruding distally from the body section, the head section having a smaller diameter than that of the body section, and an annular abutment surface disposed between the head section and the body section wherein the abutment surface is substantially at an angle to the longitudinal axis (FIGS. 2-3); forming a femoral tunnel and forming a transverse tunnel intersecting the femoral tunnel (FIG. 10); locating a graft loop in the femoral tunnel in such a manner that an open face of the loop faces an intersection where the femoral tunnel intersects the transverse tunnel FIGS. 11-12); passing at least

a part of the head section of the transverse suspension device through the graft loop via the transverse tunnel until the head section contacts a recess formed in an opposite wall of the femoral tunnel wherein the abutment surface urges the graft against the opposite wall (FIG. 14). A guidewire is advanced under observation with a viewing device, specifically an arthroscope (col. 6, lines 37-53). The recess is formed with a dilator tool (ref. #124). The transverse suspension device is cannulated. The transverse tunnel is drilled to intersect and not cross the femoral tunnel. The body section comprises external threads.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howell et al. (U.S. Patent No. 5,674,224).

Howell et al. discloses the claimed invention except for the head section being frustoconical shaped. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the head section of Howell et al. being frustoconical shaped, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of

providing a head section or ligament holding nose of a transverse suspension device. In re Dailey and Eilers, 149 USPQ 47 (1966).

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDWARD O. ROBERT  
SUPERVISOR, PATENT EXAMINER